

Brett Foster (#6089)
Grant Foster (#7202)
Tamara Kapaloski (#13471)
DORSEY & WHITNEY LLP
111 S. Main Street, Suite 2100
Salt Lake City, UT 84111
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
foster.brett@dorsey.com
foster.grant@dorsey.com
kapaloski.tammy@dorsey.com

Attorneys for Plaintiff Blendtec Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET INC., a Delaware corporation,

Defendant.

**BLENDTEC’S MOTION FOR LEAVE
TO FILE REPLY TO BLENDJET’S
RESPONSE TO MOTION TO
COMPEL**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Blendjet’s Opposition (ECF 76) to Blendtec’s Motion to Compel (ECF 68) mischaracterizes the facts and misleads the Court. Blendtec has requested a hearing on the pending discovery motions (ECF 73). If the Court has a hearing, Blendtec can address these issues then. If the Court does not, for the following reasons, Blendtec requests leave to file a reply to Blendjet’s Opposition:¹

¹ Blendjet’s Opposition includes 530 words in violation of DUCivR 37-1(b)(1).

First, Blendjet mischaracterizes both Blendtec's discovery requests and its own document production in order to claim it has produced responsive documents. However, contrary to Blendjet's representations to the Court, it has failed to produce documents responsive to the RFPs at issue. *See Exhibit 1* (Proposed Reply).

Second, Blendjet responded to Blendtec's motion to compel by effectively supplementing its discovery responses. In its Response, Blendjet makes the following representations that it failed to state in its actual discovery responses: "Blendjet: (i) has conducted a reasonable and diligent search for non-custodial Responsive Documents (hard copy and ESI); (ii) *has* produced all non-custodial Responsive Documents that it has located to date and is not withholding any such documentation; (iii) is in the process of reviewing custodial ESI from the designated ESI custodians; and (iv) has produced-and will continue to produce,-custodial Responsive Documents in a timely manner and in accordance with the conventions of the applicable ESI Protocol."² Response at 2. Although these representations are inaccurate, it is improper to supplement discovery in response to a motion to compel. Blendjet also improperly supplemented its response to RFP 31 in response to Blendtec's Motion. As such, Blendtec should be awarded fees.

Thus, Blendtec requests leave to file the reply attached hereto as Exhibit 1.

DATED this 22nd day of February, 2023.

² Blendjet muddies the issue. Blendtec's motion to compel involves *Rule 34 discovery requests* served on November 21, not email production requests under the ESI Protocol. Further, as stated in a pending motion to compel (ECF 53), Blendjet has failed to produce ESI in accordance with the ESI Protocol. Finally, Blendjet self-servingly claims in footnote 1 that "Blendtec is also producing its custodial ESI on a 'rolling basis.'" Blendtec has produced nearly 400,000 pages of emails, however. By contrast, Blendjet has produced just over 20,000 pages of emails and only from a few custodians.

DORSEY & WHITNEY LLP

/s/ Tamara L. Kapaloski

Brett Foster (#6089)

Grant Foster (#7202)

Tamara L. Kapaloski (#13471)

Attorneys for Plaintiff Blendtec Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2023, a true and correct copy of the foregoing document was served on counsel of record via the Courts CM/ECF System which sent notice to counsel of record:

Martin R. Bader: mbader@sheppardmullin.com

Jesse A. Salen: jsalen@sheppardmullin.com

Patrick M. McGill: patrick@mcgillco.com

Nathan D. Thomas: nthomas@parsonsbehle.com

Elizabeth M. Butler: lbutler@parsonsbehle.com

/s/ Tamara L. Kapaloski